

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 L.M.W., individually, and as the biological
10 father and on behalf of L.W., a minor.,

11 Plaintiff,

12 v.

13 State of Arizona, et al.,

14 Defendants.

No. CV-22-00777-PHX-JAT

ORDER

15 Pending before the Court are two motions for protective orders filed by the State of
16 Arizona in violation of this Court's Rule 16 scheduling order. Although the Court is
17 confident the parties are aware of this Court's discovery dispute procedures because the
18 parties have complied with the procedures in the past, the Court will nonetheless quote the
19 relevant portion of the Scheduling Order here.

20
21 IT IS FURTHER ORDERED that discovery motions are prohibited
22 except as provided herein. In the event of a discovery dispute, the parties
23 must file a joint discovery dispute motion requesting a discovery dispute
24 hearing. The motion shall not exceed 3 pages (no exhibits are permitted). The
25 motion cannot be broken into two parts (one for each party). Instead, the
26 motion must be an integrated document that explains the issue to the Court.
27 The motion must include a statement of consultation as required by Civil
28 Local Rule 7.2(j). The consultation must be oral. In other words, the parties
(or their counsel) cannot confer regarding a discovery dispute solely by
correspondence. They must actually speak to each other. The motion must
include an estimated length of the hearing and propose multiple dates on
which the parties are all available for a hearing. (The proposed dates should
be on the Court's law and motion day, which is Wednesday.)

(Doc. 19 at 3) (emphasis omitted).

Currently, the parties have various disputes about the scope of Plaintiff's Rule

1 30(b)(6) notice of deposition. (Doc. 135). In lieu of following this Court's discovery
2 dispute procedures, on January 31, 2024, Defendants unilaterally filed a 19-page motion
3 with 62 pages of exhibits. While the parties have had various discussions since last
4 September about a 30(b)(6) deposition, the currently pending motion takes issue with the
5 notice issued on January 18, 2024, and does not indicate a specific consultation between
6 the parties about the motion now pending.

7 The 30(b)(6) deposition is set for February 5, 2024. Thus, filing a motion on January
8 31, 2024, deprives the Plaintiff the of the 14 days to respond to a motion, which is part of
9 the reason, as the Court discussed at the Rule 16 conference, the Court will not allow cases
10 to get sidetracked by briefing various discovery motions. For these procedural reasons
11 alone, the motions for protective orders will be denied.

12 Moreover, the Motion at Doc. 135 spews an unknown number of issues at the Court
13 in a way that is very difficult to parse. For example, it complains that the most recent
14 30(b)(6) notice was issued only 25 days before the close of discovery, (Doc.135 at 6), but
15 makes no mention of why this is relevant. The Court is aware of no rule that requires the
16 parties to cease discovery at least 25 days before the close of discovery. By way of further
17 example, the motion also complains (without legal citation) that there was only nine
18 business days notice of the deposition. However, Courts have routinely held only five
19 business days is required. *See, e.g., Zone Sports Ctr., LLC v. Nat'l Sur. Corp.*, No.
20 111CV00845LJOBAM, 2012 WL 13034350, at *1 (E.D. Cal. Mar. 7, 2012) ("Commonly,
21 courts find that notice of at least five business days' notice is required to
22 constitute reasonable notice."). By way of another example, the Motion complains that
23 Plaintiff has already taken fact witness depositions that would be duplicative of (at least
24 some) of the 30(b)(6) topics. (Doc. 135 at 10) (arguing a 30(b)(6) deposition would be a
25 "waste of time")). But the law is clear that an opposing party is allowed to bind an entity
26 to its' official position on certain questions, separate from its employees' answers to those
27 questions, even if that means re-deposing the same people as fact witnesses and 30(b)(6)
28 witnesses. *See, e.g., Doe v. Trump*, 329 F.R.D. 262, 273–74 (W.D. Wash. 2018).

1 Additionally, the Motion complains about the pace at which Plaintiff has proceeded.
2 Specifically, it spends 6 full pages (Doc. 135 at 5-10) complaining about Plaintiff originally
3 noticing the 30(b)(6) deposition in July of 2023 and not more vigorously engaging with
4 Defendant about its objections to the July (and later iterations) notice. While Plaintiff
5 choosing to press this issue six months after it first arose may not be ideal for Plaintiff or
6 Defendant, there is nothing in the Rules that forbids it. Indeed, Plaintiff could have waited
7 until now to even start the discussion. Thus, to the extent this myriad of complaints
8 underpins Defendant's global request that Plaintiff be barred from taking a 30(b)(6)
9 deposition, they are all overruled.

10 At bottom, the Court's quick review of the motion reveals that the 30(b)(6) notice
11 has 17 categories. (Doc. 135-1 at 2-5). The pending Motion objects in some form to
12 categories 2, 3, 4, 12, 15, 5, 6, and 8. (Doc. 135 at 17). Thus, there are nine noticed
13 topics/categories to which Defendant has no specific objection. Defendant shall produce a
14 30(b)(6) deponent for the unobjected to categories on February 5, 2024 at 1:00 p.m. as
15 indicated in the notice and the deposition on these categories will proceed at that time.

16 As to the disputed categories, the pending discovery motions will be denied for
17 violating the Court's Scheduling order. The parties shall brief this issue as specified below.

18 Therefore,

19 **IT IS ORDERED** that the motions at Docs. 134 and 135 are denied.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

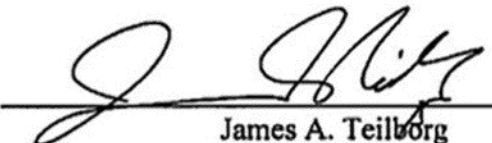
26 ///

27 ///

28 ///

1 **IT IS FURTHER ORDERED** that for each of categories 2, 3, 4, 12, 15, 5, 6, and
2 8, the parties shall JOINTLY file a memorandum (not to exceed 5 pages) by 7:00 a.m.,
3 Monday, February 5, 2024.¹ Defendant shall produce a 30(b)(6) deponent on each of the
4 17 categories on Monday, February 5, 2024 at 1:00 p.m. The Court will issue an order on
5 each of the eight disputed categories before 1:00 p.m. February 5, 2024.²

6 Dated this 1st day of February, 2024.

7
8
9
10 
11 James A. Teilborg
12 Senior United States District Judge
13
14
15
16
17
18
19
20
21
22

23 ¹ To be clear, the parties shall file a separate memorandum (not to exceed 5 pages) for
24 each category, for a total of 8 memoranda. For any category for which a memorandum is
25 not filed within this deadline, Defendant's objections will be deemed to be waived/forfeited
26 and the 30(b)(6) deposition will proceed as scheduled. Similarly, if Plaintiff fails to provide
his response to Defendant's objection to a disputed topic, the Court will deem Plaintiff to
have withdrawn that topic. The Court expects these memoranda to comply with the Court's
scheduling order in that they must be integrated with each party's respective positions.

27 ² In reviewing the motion to amend, and additionally the currently pending motion to
28 compel, the Court is very concerned about the leisurely pace with which the parties have
pursued discovery. The parties have been cautioned repeatedly that the February 12, 2024
discovery deadline is firm. The parties must make this case their highest, and perhaps their
only, priority to ensure they meet their obligations to their clients within this deadline.